



General Assembly

January Session, 2007

Bill No. 7079

LCO No. 4078

04078_____

Referred to Committee on Commerce

Introduced by:

REP. CAFERO, 142nd Dist.

SEN. DELUCA, 32nd Dist.

AN ACT CONCERNING BROWNFIELD REMEDIATION AND REDEVELOPMENT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective July 1, 2007*) Sections 4 to 7, inclusive, and
2 section 9 of this act may be cited as the Brownfield Redevelopment Act
3 of 2007.

4 Sec. 2. Section 32-9cc of the general statutes is repealed and the
5 following is substituted in lieu thereof (*Effective July 1, 2007*):

6 (a) There is established, within the Department of Economic and
7 Community Development, an Office of Brownfield Remediation and
8 Development, [that shall be within the Department of Economic and
9 Community Development for administrative purposes only.]

10 (b) The office shall:

11 (1) Develop procedures and policies for streamlining the process for
12 brownfield remediation;

13 (2) Identify existing and [create new] potential sources of funding
14 for brownfield remediation and develop procedures for expediting the
15 application for and release of such funds; [to municipalities or
16 economic development agencies;]

17 (3) Establish a place where municipalities or economic development
18 agencies may facilitate compliance with state and federal clean up
19 requirements and qualification for state funds;

20 (4) Provide a single point of contact for financial and technical
21 assistance from the state and quasi-public agencies;

22 (5) Develop a common application to be used by all state and quasi-
23 public entities providing financial assistance for brownfield
24 assessment remediation and redevelopment;

25 [(4)] (6) Identify and prioritize brownfield development
26 opportunities state-wide;

27 [(5)] (7) Analyze any action taken by the federal government and
28 other states, particularly New Jersey and Pennsylvania, regarding
29 brownfield remediation and liability; and

30 [(6)] (8) Develop and execute an outreach program to educate
31 municipalities, property owners and potential property owners and
32 other organizations and individuals with regard to state policies and
33 procedures for brownfield remediation.

34 (c) [The Office of Brownfield Remediation and Development shall
35 establish and operate] There shall be a state-funded pilot program to
36 identify brownfield remediation economic opportunities in four
37 Connecticut municipalities, one of which shall have a population of
38 more than twenty-five thousand but less than fifty thousand, one of
39 which shall have a population of more than fifty thousand but less
40 than one hundred thousand and two of which shall have populations
41 of more than one hundred thousand. The [Office of Brownfield
42 Remediation and Development] Commissioner of Economic and

43 Community Development shall designate four pilot municipalities in
44 which untreated brownfields hinder economic development and shall
45 make grants under such pilot program to these municipalities or
46 economic development agencies associated with each of the four
47 municipalities that are likely to produce significant economic
48 development benefit for the designated municipality.

49 (d) The Department of Environmental Protection, [and] the
50 Connecticut Development Authority and the Department of Public
51 Health shall each designate a staff member or members to act as a
52 liaison between their offices and the Office of Brownfield Remediation
53 and Development. The Office of Brownfield Remediation and
54 Development [shall] may develop and recruit two volunteers from the
55 private sector, including a person from the Connecticut chapter of the
56 National Brownfield Association, with experience in different aspects
57 of brownfield remediation and development. Said liaisons and
58 volunteers [shall] may assist the Office of Brownfield Remediation and
59 Development in achieving the goals of this section and, together,
60 [shall] may represent said office's response team.

61 (e) The Office of Brownfield Remediation and Development may
62 call upon any other department, board, commission or other agency of
63 the state to supply such reports, information and assistance as said
64 office determines is appropriate to carry out its duties and
65 responsibilities. Each officer or employee of such office, department,
66 board, commission or other agency of the state is authorized and
67 directed to cooperate with the Office of Brownfield Remediation and
68 Development and to furnish such reports, information and assistance.

69 (f) Brownfield sites identified for funding under the pilot program
70 established in subsection (c) of this section shall receive priority review
71 status from the Department of Environmental Protection. Each
72 property funded under this program shall be investigated in
73 accordance with prevailing standards and practices and remediated in
74 accordance with the regulations established for the remediation of

75 such sites adopted by the Commissioner of Environmental Protection
76 or pursuant to section 22a-133k and under the supervision of the
77 department or in accordance with the voluntary remediation program
78 established in section 22a-133x. In either event, the department shall
79 determine that remediation of the property has been fully
80 implemented upon submission of a report indicating that remediation
81 has been verified by an environmental professional licensed in
82 accordance with section 22a-133v. Not later than ninety days after
83 submission of the verification report, the [commissioner]
84 Commissioner of Environmental Protection shall notify the
85 municipality or economic development agency as to whether the
86 remediation has been performed and completed in accordance with
87 the remediation standards or whether any additional remediation is
88 warranted. For purposes of acknowledging that the remediation is
89 complete, the commissioner may indicate that all actions to remediate
90 any pollution caused by any release have been taken in accordance
91 with the remediation standards and that no further remediation is
92 necessary to achieve compliance except postremediation monitoring,
93 natural attenuation monitoring or the recording of an environmental
94 land use restriction.

95 (g) All relevant terms in this subsection, subsection (h) of this
96 section, sections 32-9dd to 32-9ff, inclusive, and section 11 of public act
97 06-184* shall be defined in accordance with the definitions in chapter
98 445. For purposes of subdivision (12) of subsection (a) of section 32-9t,
99 this subsection, subsection (h) of this section, sections 32-9dd to 32-9gg,
100 inclusive, and section 11 of public act 06-184*, "brownfields" means any
101 abandoned or underutilized site where redevelopment and reuse has
102 not occurred due to the presence of pollution in the soil or
103 groundwater that requires remediation prior to or in conjunction with
104 the restoration, redevelopment and reuse of the property.

105 (h) The Departments of Economic and Community Development
106 and Environmental Protection shall administer the provisions of
107 subdivision (1) of section 22a-134, section 32-1m, subdivision (12) of

108 subsection (a) of section 32-9t, sections 32-9cc to 32-9gg, inclusive, and
109 section 11 of public act 06-184* within available appropriations and
110 any funds allocated pursuant to sections 4-66c, 22a-133t and 32-9t.

111 Sec. 3. Subsection (b) of section 32-9ee of the general statutes is
112 repealed and the following is substituted in lieu thereof (*Effective July*
113 *1, 2007*):

114 (b) In determining what funds shall be made available for an
115 eligible brownfield remediation, the [Office of Brownfield Remediation
116 and Development] Commissioner of Economic and Community
117 Development shall consider (1) the economic development
118 opportunities such reuse and redevelopment may provide, [and] (2)
119 the feasibility of the project, (3) the environmental and public health
120 benefits of the project, and (4) the contribution of the reuse and
121 redevelopment to the municipality's tax base.

122 Sec. 4. (NEW) (*Effective July 1, 2007*) As used in sections 5 and 6 of
123 this act:

124 (1) "Brownfield" means any abandoned or underutilized site where
125 redevelopment and reuse has not occurred due to the presence or
126 potential presence of pollution in the buildings, soil or groundwater
127 that requires remediation prior to or in conjunction with the
128 restoration, redevelopment and reuse of the property;

129 (2) "Commissioner" means the Commissioner of Economic and
130 Community Development;

131 (3) "Department" means the Department of Economic and
132 Community Development;

133 (4) "Eligible applicant" means any municipality, a for-profit or
134 nonprofit organization, a local or regional economic development
135 entity acting on behalf of a municipality or any combination thereof;

136 (5) "Financial assistance" means grants, extensions of credit, loans or

137 loan guarantees, participation interests in loans made to eligible
138 applicants by the Connecticut Development Authority or combinations
139 thereof;

140 (6) "Municipality" means a town, city, consolidated town and city or
141 consolidated town and borough;

142 (7) "Eligible brownfield project" means the assessment, remediation
143 and redevelopment of a brownfield undertaken pursuant to this act;

144 (8) "Project area" means the area within which a brownfield
145 redevelopment project is located;

146 (9) "Real property" means land, buildings and other structures and
147 improvements thereto, subterranean or subsurface rights, any and all
148 easements, air rights and franchises of any kind or nature; and

149 (10) "State" means the state of Connecticut.

150 Sec. 5. (NEW) (*Effective July 1, 2007*) Subject to the availability of
151 funds, the Commissioner of Economic and Community Development
152 is authorized to, in consultation with the Commissioner of
153 Environmental Protection, provide financial assistance in support of
154 eligible brownfield projects, as defined in subdivision (7) of section 4 of
155 this act.

156 Sec. 6. (NEW) (*Effective July 1, 2007*) (a) An eligible applicant, as
157 defined in subdivision (4) of section 4 of this act shall submit an
158 application for financial assistance to the commissioner on forms
159 provided by the Commissioner of Economic and Community
160 Development and with such information the commissioner deems
161 necessary, including, but not limited to: (1) A description of the
162 proposed project; (2) an explanation of the expected benefits of the
163 project in relation to the purposes of sections 4 to 6, inclusive, of this
164 act; (3) information concerning the financial and technical capacity of
165 the eligible applicant to undertake the proposed project; (4) a project
166 budget; (5) a description of the condition of the property involved

167 including the results of any environmental assessment of the property;
168 and (6) the names of any persons known to be liable for the
169 remediation of the property.

170 (b) Applications properly submitted shall be reviewed and may be
171 approved, disapproved or modified by the commissioner. In reviewing
172 an application and determining the type and amount of financial
173 assistance, if any, to be provided, the commissioner shall consider the
174 following criteria: (1) The availability of funds; (2) the estimated costs
175 of assessing and remediating the site, if known; (3) the relative
176 economic condition of the municipality; (4) the relative need of the
177 eligible project for financial assistance; (5) the degree to which financial
178 assistance is necessary as an inducement to the eligible applicant to
179 undertake the project; (6) the public health and environmental benefits
180 of the project; (7) relative economic benefits of the project to the
181 municipality, the region and the state, including, but not limited to, the
182 extent to which the project will likely result in the retention and
183 creation of jobs; (8) the timeframe in which the contamination
184 occurred; (9) the relationship of the applicant to the person or entity
185 that caused the contamination; and (10) such other criteria as the
186 commissioner may establish consistent with the purposes of sections 4
187 to 6, inclusive, of this act.

188 (c) The Commissioner of Economic and Community Development
189 shall approve applications submitted in accordance with subsection (a)
190 of this section before awarding any financial assistance to an eligible
191 applicant or purchasing any participation interest in a loan made by
192 the Connecticut Development Authority for the benefit of an eligible
193 applicant. Notwithstanding any other provision of this section, if the
194 applicant's request for financial assistance involves the department
195 purchasing a participation interest in a loan made by the Connecticut
196 Development Authority, such authority may submit such application
197 and other information as is required of eligible applicants under
198 subsection (a) of this section on behalf of such eligible applicant and no
199 further application shall be required of such eligible applicant. No

200 financial assistance shall exceed fifty per cent of the total project cost,
201 provided in the case of (1) planning or site evaluation projects; and (2)
202 financial assistance to any project in a targeted investment community,
203 such assistance shall not exceed ninety per cent of the project cost.
204 Upon approval of the commissioner, a nonstate share of the total
205 project cost, if any, may be satisfied entirely or partially from noncash
206 contributions, including contributions of real property, from private
207 sources or, to the extent permitted by federal law, from moneys
208 received by the municipality under any federal grant program.

209 (d) Financial assistance may be used for (1) site investigation and
210 assessment; (2) planning, including, but not limited to, the reasonable
211 cost of feasibility studies, engineering, appraisals, market studies and
212 related activities; (3) the acquisition of real property, provided such
213 financial assistance shall not exceed fair market value; (4) the
214 construction of site and infrastructure improvements related to the site
215 remediation; (5) demolition and related activities; (6) remediation; (7)
216 environmental insurance; and (8) other reasonable expenses which the
217 commissioner determines are necessary or appropriate for the
218 initiation, implementation and completion of the project. The
219 department may purchase participation interests in loans made by the
220 Connecticut Development Authority for the foregoing purposes.

221 (e) The commissioner may establish the terms and conditions of any
222 financial assistance provided pursuant to sections 4 to 6, inclusive, of
223 this act. The commissioner may make any stipulation in connection
224 with an offer of financial assistance the commissioner deems necessary
225 to implement the policies and purposes of such sections, including, but
226 not limited to the following: (1) Providing assurances that the eligible
227 applicant will discharge its obligations in connection with the project;
228 and (2) requiring that the eligible applicant provide the department
229 with appropriate security for such financial assistance, including, but
230 not limited to, a letter of credit, a lien on real property or a security
231 interest in goods, equipment, inventory or other property of any kind.

232 (f) The commissioner may use any available funds for financial
233 assistance under the provisions of sections 4 to 6, inclusive, of this act.

234 (g) Whenever funds are used pursuant to sections 4 to 6, inclusive,
235 of this act for purposes of environmental assessments or remediation
236 of a brownfield, the Commissioner of Environmental Protection may
237 seek reimbursement of the costs and expenses incurred by requesting
238 the Attorney General to bring a civil action to recover such costs and
239 expenses from any party responsible for such pollution provided no
240 such action shall be brought separately from any action to recover
241 costs and expenses incurred by the Commissioner of Environmental
242 Protection in pursuing action to contain, remove or mitigate any
243 pollution on such site. The costs and expenses recovered may include,
244 but shall not be limited to, (1) the actual cost of identifying, evaluating,
245 planning for and undertaking the remediation of the site; (2) any
246 administrative costs not exceeding ten per cent of the actual costs; (3)
247 the costs of recovering the reimbursement; and (4) interest on the
248 actual costs at a rate of ten per cent a year from the date such expenses
249 were paid. The defendant in any civil action brought pursuant to this
250 subsection shall have no cause of action or claim for contribution
251 against any person with whom the Commissioner of Environmental
252 Protection has entered into a covenant not to sue pursuant to sections
253 22a-133aa and 22a-133bb of the general statutes with respect to
254 pollution on or emanating from the property that is the subject of said
255 civil action. Funds recovered pursuant to this section shall be
256 deposited in the Brownfield Remediation and Redevelopment
257 Revolving Loan Fund established pursuant to section 7 of this act. The
258 provisions of this subsection shall be in addition to any other remedies
259 provided by law.

260 Sec. 7. (NEW) (*Effective July 1, 2007*) (a) There is established a fund to
261 be known as the "Brownfield Remediation and Redevelopment
262 Revolving Loan Fund". There shall be deposited in the fund: (1) The
263 proceeds of bonds issued by the state for deposit into said fund and
264 used in accordance with this section; (2) repayments of assistance

265 provided pursuant to subsection (c) of 22a-133u of the general statutes,
266 as amended by this act; (3) interest or other income earned on the
267 investment of moneys in the fund; (4) funds recovered pursuant to
268 subsection (g) of section 6 of this act; and (5) all funds required by law
269 to be deposited in the fund. Repayment of principal and interest on
270 loans made pursuant to sections 4 to 6, inclusive, of this act shall be
271 credited to such fund and shall become part of the assets of the fund.
272 The Brownfield Remediation and Redevelopment Revolving Loan
273 Fund may include other separate accounts. Any balance remaining in
274 such fund at the end of any fiscal year shall be carried forward in the
275 fund for the fiscal year next succeeding.

276 (b) All moneys received in consideration of financial assistance,
277 including payments of principal and interest on any loans, shall be
278 credited to the fund. At the discretion of the Commissioner of
279 Economic and Community Development and subject to the approval
280 of the Secretary of the Office of Policy and Management, any federal,
281 private or other moneys received by the state in connection with
282 projects undertaken pursuant to sections 4 to 6, inclusive, of this act
283 shall be credited to the assets of the fund.

284 (c) Notwithstanding any provision of law, proceeds from the sale of
285 bonds available pursuant to subdivision (1) of subsection (b) of section
286 4-66c of the general statutes may, with the approval of the Governor
287 and the State Bond Commission, be used to capitalize the Brownfield
288 Remediation and Redevelopment Revolving Loan Fund created by this
289 section.

290 (d) The commissioner may, with the approval of the Secretary of the
291 Office of Policy and Management, provide financial assistance
292 pursuant to sections 4 to 6, inclusive, of this act from the fund
293 established under this section.

294 Sec. 8. Subsection (c) of section 22a-133u of the general statutes is
295 repealed and the following is substituted in lieu thereof (*Effective July*
296 *1, 2007*):

297 (c) Any person, firm, corporation or municipality which has
298 received funds under subsection (b) of this section shall repay such
299 funds to the Commissioner of Economic and Community
300 Development, according to a schedule and terms which said
301 commissioner deems appropriate. The principal amount of the loan
302 shall be due at a time deemed appropriate by the commissioner as
303 follows: (1) Upon the sale of the property or lease of the property, in
304 whole or in part, which is the subject of such evaluation or demolition;
305 (2) upon the sale or release of a municipality's liens on such property;
306 or (3) upon the approval by the Commissioner of Environmental
307 Protection of a final remedial action report submitted in accordance
308 with section 22a-133y. The Commissioner of Economic and
309 Community Development may require repayment of the loan
310 amortized over a period of no more than five years from the sale of the
311 property, sale of the lien or approval by the Commissioner of
312 Environmental Protection of the final remedial action report. No
313 repayment shall be required, other than interest for the period that the
314 loan is outstanding, if completion of remediation of environmental
315 pollution at or on the property, or the sale or lease of such property, is
316 economically infeasible due to the cost of such remediation. The
317 commissioner may require partial repayment of the loan only if partial
318 repayment is economically feasible. Any funds received by said
319 commissioner as repayment under this subsection shall be deposited
320 into the [Special Contaminated Property Remediation and Insurance
321 Fund] Brownfield Remediation and Redevelopment Revolving Loan
322 Fund. The terms of any loan agreement entered into by said
323 commissioner under said subsection may provide for the collection of
324 interest on the loan which may vary according to whether the
325 applicant is a municipality or a private entity and the duration of the
326 repayment schedule for such loan provided the interest cost to the
327 borrower provided for in such agreement shall not exceed the interest
328 cost to the state on borrowings of like terms.

329 Sec. 9. (NEW) (*Effective July 1, 2007*) The Commissioners of
330 Environmental Protection and Economic and Community

331 Development shall, in consultation with the Secretary of the Office of
332 Policy and Management, establish a pilot program to identify and
333 evaluate brownfield sites in priority funding areas designated
334 pursuant to section 16a-28 of the general statutes. Said commissioners
335 will work with state and local agencies as a coordinated team to
336 identify all necessary permits and approvals for redevelopment,
337 conduct outreach to solicit development proposals, and coordinate to
338 review all requests for funding and permit approvals.

339 Sec. 10. Subsection (d) of section 25-68d of the general statutes is
340 repealed and the following is substituted in lieu thereof (*Effective July*
341 *1, 2007*):

342 (d) Any state agency proposing an activity or critical activity within
343 or affecting the floodplain may apply to the commissioner for
344 exemption from the provisions of subsection (b) of this section. Such
345 application shall include a statement of the reasons why such agency is
346 unable to comply with said subsection and any other information the
347 commissioner deems necessary. The commissioner, [at least thirty days
348 before approving, approving with conditions or denying any such
349 application, shall publish once in a newspaper having a substantial
350 circulation in the affected area notice of: (1) The name of the applicant;
351 (2) the location and nature of the requested exemption; (3) the tentative
352 decision on the application; and (4) additional information the
353 commissioner deems necessary to support the decision to approve,
354 approve with conditions or deny the application. There shall be a
355 comment period following the public notice during which period
356 interested persons and municipalities may submit written comments.
357 After the comment period, the commissioner shall make a final
358 determination to either approve the application, approve the
359 application with conditions or deny the application. The commissioner
360 may hold a public hearing prior to approving, approving with
361 conditions or denying any application if in the discretion of the
362 commissioner the public interest will be best served thereby, and the
363 commissioner shall hold a public hearing upon receipt of a petition

364 signed by at least twenty-five persons. Notice of such hearing shall be
365 published at least thirty days before the hearing in a newspaper
366 having a substantial circulation in the area affected. The commissioner
367 may approve or approve with conditions such exemption if the
368 commissioner determines that (A)] after public notice of the
369 application and an opportunity for a public hearing in accordance with
370 the provisions of chapter 54, may approve such exemption if the
371 commissioner determines that (1) the agency has shown that the
372 activity or critical activity is in the public interest, will not injure
373 persons or damage property in the area of such activity or critical
374 activity, complies with the provisions of the National Flood Insurance
375 Program, and, in the case of a loan or grant, the recipient of the loan or
376 grant has been informed that increased flood insurance premiums may
377 result from the activity or critical activity, or [(B)] (2) in the case of a
378 flood control project, such project meets the criteria of [subparagraph
379 (A) of this subdivision] subdivision (1) of this subsection and is more
380 cost-effective to the state and municipalities than a project constructed
381 to or above the base flood or base flood for a critical activity. An
382 activity shall be considered to be in the public interest if it is a
383 redevelopment subject to environmental remediation regulations
384 adopted pursuant to section 22a-133k and is located in an area
385 identified as a regional center, neighborhood conservation area,
386 growth area or rural community center in the State Plan of
387 Conservation and Development pursuant to chapter 297. Following
388 approval for exemption for a flood control project, the commissioner
389 shall provide notice of the hazards of a flood greater than the capacity
390 of the project design to each member of the legislature whose district
391 will be affected by the project and to the following agencies and
392 officials in the area to be protected by the project: The planning and
393 zoning commission, the inland wetlands agency, the director of civil
394 defense, the conservation commission, the fire department, the police
395 department, the chief elected official and each member of the
396 legislative body, and the regional planning agency. Notice shall be
397 given to the general public by publication in a newspaper of general

398 circulation in each municipality in the area in which the project is to be
399 located.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2007</i>	New section
Sec. 2	<i>July 1, 2007</i>	32-9cc
Sec. 3	<i>July 1, 2007</i>	32-9ee(b)
Sec. 4	<i>July 1, 2007</i>	New section
Sec. 5	<i>July 1, 2007</i>	New section
Sec. 6	<i>July 1, 2007</i>	New section
Sec. 7	<i>July 1, 2007</i>	New section
Sec. 8	<i>July 1, 2007</i>	22a-133u(c)
Sec. 9	<i>July 1, 2007</i>	New section
Sec. 10	<i>July 1, 2007</i>	25-68d(d)

Statement of Purpose:

To implement the Governor's budget recommendations.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]